

## Commercial Division

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NEW YORK STATE SUPREME COURT

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### *A Brief History*

#### History of the Commercial Division

In 1993, the Supreme Court, Civil Branch, NY County, under the leadership of then-Administrative Judge Stanley S. Ostrau, established four Commercial Parts on an experimental basis. The aim was to test whether it would be possible, by concentrating commercial litigation in those Parts, to improve the efficiency with which such matters were addressed by the court and, at the same time, to enhance the quality of judicial treatment of those cases. The court's experience with the Commercial Parts was positive and the reaction of commercial practitioners to the Parts was very favorable.

In January 1995, a task force of the Commercial and Federal Litigation Section of the New York State Bar Association recommended expansion of the Commercial Parts. Specifically, the Section proposed establishing a Commercial Division of the Supreme Court in those areas of the State in which there are significant amounts of commercial litigation.

Shortly thereafter, Chief Judge Judith S. Kaye created the Commercial Courts Task Force, headed by Hon. E. Leo Milonas and Robert L. Haig, Esq., to examine the Section's report and make recommendations. The Task Force proposed that a Commercial Division be established in appropriate jurisdictions and also made suggestions and various recommendations regarding case management, technology and other issues integral to the efficient resolution of Commercial cases. The Chief Judge thereafter established the Commercial Division on a statewide basis.

In November 1995, the Commercial Division opened in Monroe County (Rochester) and in New York County. Over the course of the ensuing years, the Division has steadily expanded in response to requests of the commercial Bar and the Office of Court Administration's analysis of case data and statistics. As of mid-2007, the Commercial Division spans ten different jurisdictions Statewide: Albany, Erie, Kings, Nassau, New York, Onondaga, Queens, Suffolk and Westchester Counties as well as the entire Seventh Judicial District.

[View a list of all of the Justices to serve on the Commercial Division since its creation](#)

The Commercial Division serves as a vehicle for resolution of complicated commercial disputes. Successful resolution of these disputes requires particular expertise across the broad and complex expanse of commercial law. Because disclosure in commercial cases can be complicated, protracted and expensive, particularly in light of electronic discovery, the Division makes use of vigorous and efficient case management. The court sets deadlines and enforces them, managing discovery as needed to protect the rights of the parties to fair disclosure while minimizing expense and delay. Motion practice,

especially in the form of motions to dismiss or for summary judgment, is particularly common in commercial cases. The caseload of the Division is thus particularly demanding, requiring of the court scholarship in commercial law, experience in the management of complex cases, and a wealth of energy.

The Commercial Division has remained on top of cutting edge technology to assist in handling its caseload effectively. The Commercial Division, for instance, contributed to the development of and pioneered implementation of case management software, now widely used in New York State. New York County's Commercial Division has long used the Courtroom for the New Millennium, which is dedicated to the memory of former Commercial Division Justice Lewis R. Friedman, and which is equipped and wired with advanced technology, to assist in commercial trials.

The Commercial Division is at the forefront of the Unified Court System's Electronic Filing program—all Commercial Division matters are eligible for such filing by electronic means. In 2007, leading Bar groups, including the New York State Bar Association, the New York County Lawyers' Association, and the Association of the Bar of the City of New York, urged further expansion of electronic filing in New York State.

The Commercial Division also has made full use of an Alternative Dispute Resolution Program ("ADR") first established in New York County in early 1996. Justices may send matters to ADR at any time upon an order of referral. Detailed rules and protocols and rosters of seasoned ADR neutrals have been established in many jurisdictions around the State.

As with the Commercial Parts, the Bar has responded very favorably to the work of the Division, as have leading representatives of the business community. For example, the Commercial and Federal Litigation Section referred to the Division as "a case study in successful judicial administration." The Business Council of New York State applauded the work of the Division, describing the court in 2000 as "the envy of businesses in other states." The American Corporate Counsel Association has expressed its appreciation and support for the Division and urged other states to follow New York's lead. The American Bar Association's Business Law Section described the Division in 2000 as "a model of a specialized court devoted to the resolution of business disputes." The 87th Annual Dinner of the New York County Lawyers' Association in December 2001 saluted the Division and honored the Division Justices.

The year 2006 was a particularly significant one for the Commercial Division. The Commercial and Federal Litigation Section awarded its prestigious Stanley H. Fuld Award to the entire Commercial Division at its January 25, 2006 Annual Meeting.

Only days earlier, on January 17, 2006, the Commercial Division adopted Statewide Standards for Assignment of Cases and Rules of Practice. These Standards provide clarity as to which cases are heard in the Commercial Division and which are not and established uniform practices and procedures for cases once they are within the

Commercial Division.

This same year, OCA created the new position of Statewide Special Counsel for the Commercial Division. This office provides added support for all the Justices of the Division and their staff. It also seeks to provide a communication resource to commercial practitioners maintaining the flow of communication between Bench and Bar that has always been a hallmark of the Division.

Perhaps most significantly, 2006 marked the completion of the Commercial Division Focus Group Project. OCA structured the Focus Groups to promote candid dialogue among judges, lawyers and clients to generate new ideas, identify potential areas of improvement and assess application of "best practices" that have evolved in the Commercial Division to the court system as a whole. Focus Group sessions spanned the State, bringing together lawyers, former and current judges and in-house counsel of major corporations.

OCA later issued the Report to the Chief Judge on the Commercial Division Focus Groups, in July 2006, summarizing the work and conclusions of the Focus Groups. The Report contained two types of findings: a list of "good ideas" that had developed within the Commercial Division that could be considered for exportation and use elsewhere within the court system and suggestions for improvements to the Commercial Division itself.

As a further step in the Commercial division's long-standing close relationship with the practicing Bar, in 2007, the Commercial Division began the tenth year of publication of the Commercial Division Law Report, a newsletter that summarizes leading Commercial Division cases statewide. The text of the decisions are linked to the summaries in the on-line version of the Report. The Report is now being issued with the assistance of a special committee of the Commercial and Federal Litigation Section and the Statewide Special Counsel for the Commercial Division.

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